

John McCarthy

Old Granite Development vs. The City of Toledo, et al

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

WESTERN DIVISION

OLD GRANITE DEVELOPMENT :  
LTD,

:

Plaintiff, :

vs. : Case No. 3:06CV2950  
Judge Zouhary  
THE CITY OF TOLEDO, et al., :

Defendants. :

- - -

Deposition of JOHN McCARTHY, a Witness

herein, called by the Defendants as upon  
Cross Examination under the Ohio Rules of Civil  
Procedure taken before Maureen St. John,  
Registered Professional Reporter and Notary  
Public in and for the State of Ohio, pursuant to  
stipulations of counsel, at the office of Bahret  
& Associates, 7050 Spring Meadows West Dr.,  
Holland, Ohio, on Wednesday, January 23, 2008, at  
11:10 a.m.

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1 there? Do you see that?	1 MR. TASSE: All right.
2 A. Yes.	2 MR. ROBON: You're right, Bob. I 3 apologize. Bob is always right.
3 Q. It looks like you're moving that or removing 4 that or doing something to that fence in this 5 picture, correct?	4 MR. BAHRET: Thank you.
6 A. Well, I don't know what we are doing with 7 it.	5 MR. ROBON: Ninety-nine percent of 6 the time you are.
8 Q. Looks like you're reaching down and got your 9 right arm on it or right hand, correct?	7 Q. After the clearing, is that when you hired 8 the Gradel Company, George Gradel Company?
10 A. Yeah. We might have been repositioning 11 that. They may have had it over on our side or 12 something, but we made sure we kept that up 13 because we asked them to put that little fence up 14 there.	9 A. We hired them, yes, we did. When we hired 10 them to save the sale or whatever, we were going 11 to build this mound.
15 Q. Do you know from looking at this picture 16 what lot this is on?	12 Q. All right. So what did you do to start 13 building the mound?
17 A. It's got to be Lot 15.	14 A. We went and found some dirt and trucked it 15 in and brought it in on the property and started 16 pushing it up.
18 Q. Now, in the direction that you would be 19 looking in this picture, you see there is a tree 20 growing up behind where the backhoe is?	17 Q. Where did you start pushing the dirt up on 18 what property?
21 A. Yes.	19 A. At the end of -- right on 16.
22 Q. Obviously, that tree is in bloom, and it's a 23 living tree at this time, isn't it?	20 Q. You say you trucked it in from where?
24 A. Yep.	21 A. From Bates Road.
25 Q. Tell me when you started building your	22 Q. Where did you get it on Bates? What was 23 going on up there?
Page 119	24 A. Nothing. We just came down the railroad, 25 the old railroad bed.
1 mound?	Page 121
2 A. It was shortly after they did the clearing.	1 Q. I'm sorry, where did you get the dirt?
3 Q. So the clearing took place -- you're not 4 exactly sure of the month it took place in, 5 right?	2 A. We got I think all of it, we got it from 3 Five Point Road in Perrysburg. It was a sewer 4 job up there.
6 MR. ROBON: Asked and answered 7 three times.	5 Q. Did you buy it or did you have permission to 6 take it or how did you get it?
8 Q. I mean, I'm just -- I'm trying to remember 9 what you said.	7 A. No, I made arrangements with the sewer 8 contractor to bring the soil down here.
10 A. I'm not -- we would have to get our things 11 out here again, but I think it's --	9 Q. Do you know what kind of dirt that was? Was 10 it clean fill, was it --
12 Q. As you sit here today, you don't know?	11 A. Yeah, it was virgin fill. I mean, it was a 12 new sewer line that they were putting down.
13 A. March, give or take a month.	13 Q. Who was the sewer job from?
14 Q. So after the clearing --	14 A. Who was it from? Who was the contractor?
15 MR. ROBON: Just don't guess. I 16 know you're getting tired.	15 Q. Yeah, who did you get the dirt from?
17 THE WITNESS: I'm not tired.	16 A. I would have to look it up. They were from 17 out of town.
18 MR. ROBON: Think about what the 19 hell you're saying. That's not what you said a 20 little bit ago.	18 Q. So you have that record somewhere?
21 MR. TASSE: Is that an objection?	19 A. Yes.
22 MR. BAHRET: Yes, it actually what 23 he said a little bit ago. He said it was either 24 February or April, and now he says March, give or 25 take a month, which is about the same.	20 Q. You brought what kind of a truck, like a 21 semi tractor full of dirt or pickup truck? What 22 did you use?
	23 A. We had a dozen dump trucks, tandem dump 24 trucks come in.
	25 Q. Came in on the railroad right-of-way?

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1 A. Came down from Bates Road. Came up and back 2 onto Cambridge property that way. 3 Q. Where did they dump the dirt, all on 15 or 4 16? 5 A. 15 and 16 is where we started. 6 Q. What did you do with the dirt after it was 7 dumped? 8 A. We started, as the trucks dumped, he would 9 be pushing it out and grading it up and starting 10 a mound. 11 Q. He being Gradel Company? 12 A. Yeah, I had a separate guy bring the dirt 13 in. George Gradel Company, they went and they 14 provided the equipment. 15 Q. Who was your man from Gradel Company? 16 A. The superintendent? 17 Q. Yes. 18 A. His name was Tom Briggs. 19 Q. Was he the guy doing the grading on the 20 Cambridge property? 21 A. He was the superintendent. The guys worked 22 for him, the equipment operators. 23 Q. So he had operators that were there doing 24 the grading? 25 A. Right.	1 dumped the dirt would have been the property edge 2 of Old Granite right next to where the railroad 3 property was? They started there and then worked 4 toward the home? 5 A. Yes. 6 Q. How far did they grade from that point 7 toward the home? What distance was that? 8 A. Oh, it was probably about 20 feet, 25 feet. 9 Q. How deep, how high did this mound get at any 10 particular time? 11 A. You can see here; this is all we got. We 12 got up to about this grade, which is only about 13 six feet high or five feet you can see here. 14 Q. Is the dirt that we see on the left-hand 15 portion of this picture, is that part of the 16 mound? 17 A. This is our dirt over here. 18 Q. So what, if that's your dirt and that's the 19 mound partially shown in Exhibit F, what is the 20 hole for that's dug by this backhoe in picture 21 Exhibit F? 22 A. This hole here? 23 Q. Yes. 24 A. That's where we were verifying where the 25 trees were so that we could go and survey them
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1 Q. What kind of vehicle or what kind of truck 2 did they use to do the grading? 3 A. They had a bulldozer and they had a backhoe. 4 Q. In addition to what we see in Exhibit F? 5 A. Yes, this was just to uncover the trees 6 here. 7 Q. So they brought how many trucks, a dozen 8 dump trucks full of dirt and put it down, and 9 then it was graded on to your property; is that 10 right? 11 A. They used a dozen different trucks, but they 12 ran it for a day. They probably had ten loads 13 apiece, probably a hundred, maybe a hundred loads 14 of dirt we brought in. 15 Q. Did you start to make your mound? 16 A. Yeah, yeah. They went and started shaping 17 it up. They had the dozer there. 18 Q. First of all, they probably had to do some 19 filling of low levels on your property, didn't 20 they, with the first loads of dirt? 21 A. Well, it was already -- you know, this was 22 already graded. It was already a finished 23 development. We were raising up the grade of the 24 backyard. 25 Q. Am I correct in understanding where they	1 and put a line on these and show which trees were 2 actually, the base of them were on Cambridge 3 property. We were uncovering the top. 4 Q. Did you have a record of the date when you 5 brought in the hundred loads of dirt? 6 A. Yes, we do. I've got records of that. 7 Q. What are those records called, I mean? 8 A. They billed us and everything, so that's the 9 foreman's report or the daily -- some kind of a 10 daily report. 11 Q. Do you have records from Gradel Company? 12 A. Same thing. 13 Q. Obviously, that work was done prior to any 14 of the piping laid for the water main project, 15 wasn't it? 16 A. Yes. 17 Q. Let me show you a few more pictures. 18 (Plaintiff's Exhibit G marked 19 for identification.) 20 Q. Do you have Exhibit G in front of you? 21 A. Yes. 22 Q. I take it that's you in the picture shown 23 next to the pipe? 24 A. It looks like me. 25 Q. And do you know who that other gentleman is

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1 standing behind the backhoe?	1 is that right?
2 A. I can't tell.	2 A. Well, you're getting real close to the, you
3 Q. All right. And is this another view of the	3 know, that's right on the line. Whether Ric-Man
4 same hole that you had dug in the ground shown in	4 did it or we did it, I couldn't tell you because
5 Exhibit F?	5 it's really close. That's, right where that
6 A. It appears to be, yes.	6 little fence is and that the property line was.
7 Q. The purpose of digging that hole to that	7 Q. What I'm getting at is the dirt that you dug
8 depth was exactly for what?	8 up, for example, in Exhibit F to look for what
9 A. We were trying to go and locate the trees,	9 was under it, that was dirt that you had trucked
10 and we took it right down to the base of this	10 in; isn't that right?
11 wall. If you get it real close, you can even see	11 A. Most of it.
12 some of the timbers. We took it right down in	12 MR. ROBON: You're now 30 minutes
13 some place to make sure we were showing the wall	13 past your 20 minutes.
14 because the wall shows up from before we ran this	14 (Plaintiff's Exhibit H marked
15 dirt out of here. We dug it down to the wall	15 for identification.)
16 right along our property line.	16 Q. Let me show you Exhibit H. Can you identify
17 Q. Was this digging that took place in this	17 what that is?
18 picture, Exhibit G, was this before or after the	18 A. Well, this is the construction fence.
19 VCP pipe had been cut?	19 Q. Right.
20 A. No, this was way before.	20 A. I don't see anything.
21 Q. So you had in mind to build yourself the	21 Q. The construction fence and then to the left
22 mound before the VCP pipe issue ever came up,	22 of what we are looking at in this picture is the
23 isn't that right?	23 water pipe, correct? That's on the railroad
24 A. Yes.	24 property, isn't it?
25 Q. Did you ever have approval to build a mound	25 A. No, this has got to be on our property. I
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1 at that point from any governmental agency?	1 think that's -- I don't know what that is.
2 A. Yes.	2 Q. Sir, what I'm trying to show you, as you
3 Q. Who gave you approval to build your mound?	3 look at this picture on the left of this fence,
4 A. Township. I went and saw the zoning guy.	4 that goes toward the railroad property, doesn't
5 Q. Tom who?	5 it?
6 A. I didn't say Tom. The -- we have a, in	6 A. Right.
7 Perrysburg Township, they call them the zoning	7 Q. That is where the water pipe is sitting?
8 director. I can't remember his name, but I went	8 A. Yes, that's where the --
9 and asked him.	9 Q. And then to the right of this would be the
10 I said, "You know, we are going to	10 Cambridge property, correct?
11 build this mound, what kind of permits do I need	11 A. Yeah, this is Cambridge over here, and this
12 or anything?" And he said, "You don't need	12 is the railroad up here.
13 anything as long as you don't have a fence higher	13 Q. This is obviously after the clearing had
14 than seven feet." And so we weren't intending on	14 been done because they're laying the pipe there
15 doing that. We were going to make -- he said,	15 to be put in; isn't that right?
16 "If you just do it with dirt, you don't need a	16 A. Yeah, this is the --
17 permit. If you want to just raise the grade on	17 Q. All right. Then this is a view down that
18 your property, that's fine."	18 way. Can you tell what direction? Is that
19 Q. How high of a mound were you able to build	19 looking back towards the Hospice area, the view
20 with the hundred truckloads of dirt?	20 in this picture?
21 A. You just seen it here. It's just up to the	21 A. It appears to be looking towards the
22 top of the railroad, which is probably five feet.	22 Hospice.
23 Q. So the dirt that you're standing on in	23 Q. What we see there in the foreground right in
24 Exhibits F and G, that's the dirt that was	24 front of this picture, you see some vines or
25 trucked in by you the hundred or so truckloads;	25 perhaps the brambles and things that have been

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1 talked about, isn't that right, in the foreground 2 right here on the right side?	1 get access, right? 2 A. Right.
3 A. Yes.	3 Q. Did you get permission to do that when you 4 brought in the Gradel Company vehicles or did you 5 just do it?
4 Q. Then as you look back in that picture, you 5 see some mature trees that are grown up there, 6 correct?	6 A. No, we had permission.
7 A. Back in here?	7 Q. You did? From whom?
8 Q. Yes.	8 A. CSX.
9 A. Yes, I see some trees back in there.	9 Q. Who at CSX?
10 Q. Those are standing, and that's after the 11 clearing was done, correct?	10 A. I got a letter. We sent them a notice, told 11 them we weren't going to change their railroad 12 bed, and if they had any objections, let me know.
12 A. I don't know whether they took them down. 13 Yeah, I think those were left over, and I think 14 they're still standing, too.	13 Q. Do you still have a copy of that letter?
15 Q. Just a couple more pictures. Let me show 16 you Exhibit I.	14 A. Yes.
17 (Plaintiff's Exhibit I marked 18 for identification.)	15 MR. FAGNILLI: I'm sorry, is that 16 letter from them or to them?
19 Q. That's you in the picture, isn't it?	17 THE WITNESS: To them.
20 A. Yes, sir.	18 Q. Did you ever get any response from them?
21 Q. And that's your backhoe that you either 22 hired from Gradel?	19 A. No.
23 A. Right.	20 Q. So you sent the letter, and then after that 21 you brought your equipment in, correct?
24 Q. Or somebody else, correct?	22 A. Right.
25 A. Right.	23 Q. Never actually talked to anybody and got 24 permission to do this?
	25 A. No, I actually talked to somebody, too.
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1 Q. And is that the same hole that you had dug 2 that we talked about in the earlier pictures?	1 Q. Who?
3 A. Yes.	2 A. The real estate guy. I've got his name 3 down. I can get you his name. They have a real 4 estates guy, who's kind of like the coordinator 5 of outside activities.
4 (Plaintiff's Exhibit J marked 5 for identification.)	6 Q. You're going to produce that as well?
6 Q. On the boom of that vehicle, it says 7 American Rental?	7 A. Yeah, I can.
8 A. Yes.	8 Q. Let me show you Exhibit J.
9 Q. Does that tell you that that's one that you 10 personally rented?	9 (Plaintiff's Exhibit J marked 10 for identification.)
11 A. Right.	11 Q. Do you have Exhibit J in front of you?
12 Q. As opposed to what Gradel Company did, 13 right?	12 A. Yes.
14 A. They just operated it.	13 Q. That's a picture of you walking away from 14 the photographer?
15 Q. So you obviously trucked a backhoe over 16 there yourself to this property, correct?	15 A. Yep.
17 A. Yep.	16 Q. Somebody's operating the backhoe; do you see 17 that?
18 Q. And how did you get this onto the location 19 where it is? Did you go back on the railroad 20 right-of-way and drive in that way?	18 A. Yes.
21 A. I think with this little machine, we just 22 brought it down from next door. There's a path 23 on Lot 16.	19 Q. That appears to be a different hole from the 20 one that was shown in the earlier exhibits; isn't 21 that right?
24 Q. But the Gradel Company vehicles, those had 25 to come in from the railroad property in order to	22 MR. ROBON: If you know. 23 A. Well, let's take a look. 24 Q. Let me ask it this way: In picture Exhibit J we see two holes that are dug or two trenches,

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1 or whatever you want to call them, correct?	1 trucked in by you in the hundred trucks or so you
2 A. Uh-huh.	2 said from another location?
3 Q. Yes?	3 A. You can see the property line right there.
4 A. Yes.	4 Q. Is what I said true?
5 Q. And the man that's operating the backhoe in	5 A. All the --
6 Exhibit J looks like he is pretty close to, right	6 Q. The dirt to your left --
7 up against a tree that's remaining and standing	7 MR. ROBON: Repeat it.
8 on the property, correct?	8 MR. TASSE: Here, I'll do it again.
9 A. Right.	9 Q. In Exhibit J, was the dirt that's from your
10 Q. Did he knock that tree over? Did he take	10 left towards the houses, was that dirt that you
11 that tree out?	11 had trucked in?
12 A. No, I think that tree is still there.	12 A. No, just from the stakes.
13 Q. Do you know if when he was doing this	13 Q. Just from what stakes?
14 digging shown in Exhibit J, he damaged the roots	14 A. These stakes. See these stakes here?
15 or the base of that tree?	15 That's the property line. That's what we trucked
16 A. No, we tried to stay away from it.	16 in.
17 Q. The dirt that he was digging, piling to the	17 Q. I'm trying to see what you're --
18 operator's right, is that part of the mound that	18 A. It's a little bit different than where I'm
19 you were creating?	19 standing. See how I'm a foot or two over? This
20 A. No, this was just to locate the stumps.	20 is our dirt; this is your dirt.
21 This was going to go back in the hole whenever we	21 Q. Clearly the man on the backhoe is on top of
22 got back on track on this thing.	22 dirt that you trucked in from another location?
23 Q. What we see in Exhibit J is a man operating	23 A. That's true.
24 a backhoe digging out dirt that you had trucked	24 (Plaintiff's Exhibit K marked
25 in from another location in order to see what was	25 for identification.)
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1 underneath it?	1 Q. Show you Exhibit K, and you recognize this
2 A. Right, to see the trees.	2 as being part of the Cambridge property adjacent
3 Q. All right. But the dirt that he is on and	3 to the railroad?
4 the dirt that you're walking on there, that's	4 A. Yes.
5 dirt that you had trucked in from the other	5 Q. All right. Now, that appears to be a
6 location, correct?	6 different trench than what we have seen in the
7 A. Like I said, where he is that's definitely	7 earlier pictures, F to J; is that correct?
8 true, but where I am at, you're really close to	8 A. I think it's the same one, same one.
9 the property line. That was probably there by --	9 Q. Same one as what?
10 Q. All right. Let's assume that in this	10 A. These two pictures are of the same trench.
11 picture that you're on your own property. Just	11 Q. Which two pictures, the one before it?
12 for this picture can you do that, Exhibit J?	12 A. Yes.
13 A. No, I'm pretty sure this is -- this is the	13 Q. Exhibit J and K?
14 stakes of the property line, and I'm on the	14 A. Yes.
15 railroad property.	15 Q. Are the same trench?
16 Q. Where you are is on the railroad property?	16 A. Yes. It's the same tree, same old tree.
17 A. Yeah.	17 Q. Okay, K is just a little bit closer?
18 Q. Are you immediately adjacent to the	18 A. Yes.
19 Cambridge property?	19 Q. What was the purpose of digging the ditch in
20 A. Yes.	20 Exhibit K?
21 Q. So off to your left would be the Cambridge	21 MR. ROBON: Objection, asked and
22 property?	22 answered five times.
23 A. That's right.	23 A. To see the stumps.
24 Q. So everything from your left out towards the	24 Q. No other reason?
25 Cambridge property, all that dirt was what was	25 A. No, that was the only reason.

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<p>1 (Plaintiff's Exhibit L marked 2 for identification.)</p> <p>3 Q. Show you Exhibit L. Do you recognize that 4 as being the same area of the Cambridge property?</p> <p>5 A. Yes.</p> <p>6 Q. Would you agree with me that this shows a 7 longer continuous trench of some sort?</p> <p>8 A. Yeah, it's the same trench.</p> <p>9 Q. What did you dig this trench for?</p> <p>10 A. This is the same trench. See all the vines 11 and all the stuff coming out? That's what we 12 were trying to show them.</p> <p>13 Q. You or your man from Gradel dug this trench 14 shown in Exhibit L, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And it appears to me, but I wasn't there at 17 the time, that it's a longer ditch that goes the 18 whole back --</p> <p>19 A. Right, we connected them.</p> <p>20 Q. You connected the trenches that you dug?</p> <p>21 A. Yes, there's a couple holes. We connected 22 them. We went right down the line to show that 23 this was where the heaviest trespassing was, and 24 there was trees that were rooted in Cambridge 25 property that they tore down.</p>	<p>1 for identification.)</p> <p>2 Q. Let me show you Exhibit M. Do you have 3 Exhibit M in front of you?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you recognize that, either the manhole or 6 catch basin shown in that picture?</p> <p>7 A. I think so.</p> <p>8 Q. Where is that located?</p> <p>9 MR. ROBON: Are you representing 10 that's on this property someplace.</p> <p>11 Q. Yes.</p> <p>12 A. And this appears to be at -- yeah, this is 13 at Lot 15.</p> <p>14 Q. There is also a cable box or a phone box 15 shown there in that picture, isn't there?</p> <p>16 A. Yeah, there is a phone and there's a cable 17 box, both of them.</p> <p>18 Q. In those boxes and what's depicted in 19 Exhibit M is from work that you or Gradel Company 20 have done on your behalf; isn't that right?</p> <p>21 A. This dirt was from the mound, that's right.</p> <p>22 Q. Right. And the box that's over on its side, 23 that's something that you or your Gradel 24 contractor had done; isn't that right?</p> <p>25 A. Yeah, they took the top off that time. This</p>
<p style="text-align: center;">Page 139</p> <p>1 Q. When you dug the trenches shown in Exhibit L 2 and you placed the dirt off towards the Cambridge 3 property, did you cover up any of your catch 4 basins or manholes?</p> <p>5 A. No.</p> <p>6 Q. How do you know that?</p> <p>7 A. Well, we've only got three of them. We 8 stayed away from them; we needed them.</p> <p>9 Q. Did anyone ever tell you that you had 10 covered them up or plugged them in any way?</p> <p>11 A. No, they were never covered up. Our catch 12 basins were never covered up; still are not.</p> <p>13 Q. After you dug the trenching shown in Exhibit 14 L, what did you do with them? Did you leave that 15 trench the way it is or did you refill it or what 16 did you do?</p> <p>17 A. No, we left it there. We took photos and we 18 cleared out the bigger stumps that were ten-inch 19 diameter stumps on Cambridge property. We 20 cleared it out, and it's still there to this day.</p> <p>21 Q. What is still there?</p> <p>22 A. The trench.</p> <p>23 Q. The trench as we see it in Exhibit L?</p> <p>24 A. Yes.</p> <p>25 (Plaintiff's Exhibit M marked</p>	<p style="text-align: center;">Page 141</p> <p>1 was in preparation to raise them up to build the 2 mound?</p> <p>3 Q. And this is the last picture I have.</p> <p>4 (Plaintiff's Exhibit N marked 5 for identification.)</p> <p>6 Q. Showing you what I've marked as Exhibit N, 7 do you recognize that as views at the back of 8 your property adjacent to the railroad property?</p> <p>9 A. Yes.</p> <p>10 Q. In the top left-hand picture of that, of 11 this page, as you look down the property line, 12 you see the trees and some of the vegetation 13 still there?</p> <p>14 A. Yes.</p> <p>15 Q. And the dirt that we see in the picture in 16 the top left corner of Exhibit N, the dirt to the 17 right there, that's the dirt that you had trucked 18 in from the other location, right?</p> <p>19 A. That's right.</p> <p>20 Q. The picture directly below that one on the 21 lower left-hand corner, that's the trench that 22 you had dug that's shown in the other pictures?</p> <p>23 A. Yep, yes.</p> <p>24 Q. And the same if you go to the right side of 25 the picture in the lower right-hand corner,</p>

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1 that's also the trench that you dug with -- 2 either you dug with the backhoe or Gradel Company 3 dug at your request, right? 4 A. Yes. 5 Q. Did you ever speak to anyone from Ric-Man 6 whenever you were on the premises? 7 A. Yes. 8 Q. When did you talk to anybody you identified 9 as being from Ric-Man? 10 A. That same period, March or give or take a 11 month. 12 Q. Do you know who you spoke to? 13 A. I have his name; a big guy. I don't know if 14 you know that superintendent. He is their 15 general superintendent. 16 Q. So you don't know it as you sit here, but 17 you have it somewhere else? 18 A. Yes. 19 Q. You can provide who you talked to? 20 A. Yes. 21 Q. How many times did you talk to somebody from 22 Ric-Man? 23 A. Oh, probably three or four times. 24 Q. Were any of those times alone with you and 25 the Ric-Man person, or was it always in the	1 Q. It was a group? 2 A. Yes. 3 Q. Just so we're clear, you were not present 4 for any part of the process when the crossover 5 pipe was unearthed or taken out? 6 A. Right, I was not there. 7 Q. And you were never there at any time before 8 that area was covered up so you could see what 9 remained, correct? 10 A. Before what was covered up? Oh, I did not 11 see the ends of the pipe that they broke off. 12 All I had was, you know, Christy told me what 13 happened, that they deliberately cut the pipe. 14 And, you know, she said, "Well, if you can show 15 that you needed it, we'll put it back." 16 Q. She also told you that it was plugged and it 17 was deteriorated and it was decrepit and it was 18 not in use, didn't she? Isn't that what she told 19 you? 20 A. Not exactly. I don't think she ever saw it 21 either. I think she was told that by their 22 inspector or by Ric-Man and that kind of thing. 23 Q. In fairness to you, you never saw it 24 unearthed so you don't know what the condition 25 was underground, do you?
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1 company with other folks from Toledo or the 2 railroad? 3 A. I think most of the time it was with Christy 4 Soncrant, but I think I talked to -- I talked to 5 the foreman at least once alone in person, and by 6 the phone I talked to him. I talked to Steve 7 Mancini, I think it's Steve Mancini, about trying 8 to get dirt for the mound. And I talked to at 9 least two different people from Ric-Man 10 significantly. 11 Q. You were talking to them about trying to get 12 dirt from the project in order to use to build 13 your mound, correct? 14 A. Right, we were talking -- I talked to them 15 about the crossover pipe, that we needed that, 16 the field guy I did. 17 Q. The field guy is different from Mr. Mancini, 18 right? 19 A. Yes. I'll remember his name in a second. 20 Q. The discussions you had about the crossover 21 pipe, is that essentially the same things that 22 you talked about with the people from Toledo and 23 the county, etc.? 24 A. Yes, and I think he was there when we talked 25 to the county engineer.	1 A. Well, I saw it in the manhole and I saw it 2 in the ditch, both ends, I saw it. 3 Q. Right. We talked about what you're going to 4 try to show us in pictures, right? 5 A. Right. 6 Q. But you never saw it when it was unearthed 7 and exposed to the elements so you could 8 visualize it, right? 9 A. Right. 10 Q. And you don't know what condition it was in 11 when they made the decision to cut it off? 12 A. Well, they told me; they both told me. 13 Q. They told you it was all plugged up and 14 cracked and not in use, didn't they? 15 A. Not exactly. They said, you know, it would 16 never work. They implied that it was at least 17 mainly plugged up. 18 Q. No one ever told you from the City, the 19 County, Ric-Man, anyone else relating to this 20 project that that was a fully functioning 21 drainage pipe under the railroad, did they? 22 A. The County did. 23 Q. What did they tell you? 24 A. That we needed that pipe. 25 Q. No, that's not my question.

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<p style="text-align: right;">Page 150</p> <p>1 check to make sure that their control point, 2 which I believe was down on Bates Road, that that 3 was in synch. They checked that out. 4 Q. It's your testimony that the property line 5 is 101 feet from the center of the railroad? 6 A. I would have to look. 7 Q. The stakes with orange ribbon around them 8 that are shown in the photographs F through N, 9 who put those stakes up, do you know? 10 A. I think we've already kind of been through 11 that. We are not sure whether this was Peterman, 12 the City. I believe this is Peterman's lath, so 13 that we can -- 14 Q. But you're not sure? 15 A. No. 16 Q. There was at one time a railroad fence that 17 ran along the railroad right-of-way between the 18 property line and the -- for the old Cambridge 19 and the railroad right-of-way; is that correct? 20 A. This railroad tie fence that we're talking 21 about. 22 Q. There was a, not just a railroad tie fence, 23 but there was an actual metal fence that ran 24 along that property right-of-way, and it runs 25 along the right-of-way all the way to the Maumee</p>	<p style="text-align: right;">Page 152</p> <p>1 the -- they do have a fence. I don't know whose 2 it is, whether it's -- but it's not the same kind 3 as the old railroad fence. 4 Q. Do you know why the fence isn't there any 5 longer in the area of the Cambridge property? 6 A. No, I don't. 7 Q. Do you know what clearing was done to put in 8 the Cambridge property initially? 9 A. I wasn't around for that. The only evidence 10 we have of that is that the aerial photos show 11 that it was farm field before and farm field, you 12 know, development afterwards. It wasn't -- 13 Q. Have you seen aerial photographs prior to 14 2001? 15 A. I believe so. 16 Q. The only aerial photograph I've seen from 17 Plaintiff's attorney is the one from 2005, which 18 would be after the development was put in. And 19 what I'm asking you is if you have any aerial 20 photographs that you've seen that show the area 21 before Jacqueline Drive was put in and before the 22 development was done? Have you seen anything 23 like that? 24 A. I believe so. I believe that we went and 25 looked at -- we went over -- it might have been</p>
<p style="text-align: right;">Page 151</p> <p>1 River, right, from Bates Road all the way to the 2 Maumee River. 3 A. No, that fence, that metal fence was on the 4 face of the railroad ties for that 150 feet, and 5 that was the only thing left on the Cambridge 6 property of that old railroad fence, as I recall. 7 It wasn't continuous down there. 8 Q. Well, is there -- 9 A. I shouldn't say. Maybe I never -- but there 10 was no sign of it or anything. 11 Q. Was there a fence like that to the -- that 12 exists today to the east of the Cambridge 13 property? 14 A. There is still some semblances of it there; 15 there's some little bits of it along there. 16 Certainly, a hundred years ago, that was up and 17 standing all the way when this thing was active. 18 But it wasn't there. At least when I first got 19 on the scene, that was long gone. The only part 20 of it was the part that was on the face of those 21 timbers. 22 Q. Is there a fence like that to the west of 23 the Cambridge property along the railroad 24 right-of-way? 25 A. It's not -- it's a newer one, but it's along</p>	<p style="text-align: right;">Page 153</p> <p>1 somebody Gary Buck said he went over to -- looked 2 at the aerials. 3 Q. Where did he go to look at these aerials? 4 A. Over at Mannik &amp; Smith, and there was 5 some -- 6 Q. What is Mannik &amp; Smith? 7 A. That was a consultant, and they did some of 8 the environmental stuff on this project. And 9 they're like the consultant that does aerial 10 photography around there. He kind of has access 11 to all the computerized and whatnot. 12 Q. What consulting did Mannik &amp; Smith do on 13 what project? 14 A. They did some environmental review. 15 Q. For who? 16 A. For the City of Toledo. 17 Q. For the water main project? 18 A. That's the way I understand it. But they're 19 kind of like the custodian of aerial photography, 20 and I can't remember whether I saw it or Gary 21 Buck saw it. This was back before 2005 or before 22 2000 -- actually 1999 I think is when this 23 project, the Cambridge project started, that 24 there were aerial photographs back in that era 25 that showed that this was farm field.</p>

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1        And the Gillette man next to Cambridge 2        also confirmed to me that, you know, this was all 3        farm land long before you guys got here with this 4        Cambridge project. 5        So I believe that -- I think all the 6        clearing or essentially all the clearing was done 7        before Cambridge got there because it was farm 8        field from way back. 9        Q. So is it your testimony that before the 10       mound was built, there was some survey done by 11       Peterman & Associates, a legal surveyor, or are 12       you not sure about that? 13       A. I'm sure of that. 14       Q. Before the mound was built, did you or 15       anyone acting on behalf of Old Granite contact 16       Vermillion to tell them that the mound was going 17       to be built? 18       A. Vermillion? 19       Q. Yes. 20       A. No. 21       Q. Did you or anyone acting on behalf of Old 22       Granite ever contact anyone at Vermillion to 23       complain about the clearing and claim there was a 24       trespass by the clearing at any time before the 25       mound was built?	1        Cambridge property or the Old Granite property at 2       any time before this fill was put in? 3        A. Yes, yes. 4        Q. And you have those photographs? 5        A. Yes, I do. Hope we got all of them. 6        Q. Do you know if any of those photographs have 7       been deleted or altered in any way? 8        A. I hope not. 9        Q. Do you know? 10       A. No, I don't know. 11       Q. What have you done to preserve those 12       photographs to ensure that they won't be deleted 13       or altered? 14       A. Well, I gave them to the City of Toledo, for 15       one thing. 16       Q. When did you give them to the City of 17       Toledo? 18       A. Right after we took them, right before we 19       did the mound. 20       Q. Did you give them to them in electronic 21       format or did you give them to them in printed 22       format? 23       A. Both. 24       Q. So they should have a disk with all these 25       photographs?
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1        A. No, we didn't even know Vermillion existed. 2        Q. Did you contact anyone from Edwards Tree 3        Clearing Service? 4        A. No. 5        Q. Well, you saw the trucks, right, from the 6        land-clearing company? 7        A. That was afterwards, afterwards. 8        Q. It was before the mound was built? 9        A. Yes. 10       Q. I'm asking you before the mound was built 11       and after the clearing was done, did anyone 12       contact anyone from Vermillion or Edwards Tree 13       Clearing Service to let them know that there was 14       a complaint about alleged trespassing here? 15       A. We dealt with the City. 16       Q. That's not my question. 17       A. No, we did not go in -- we did not -- I did 18       not call or contact Edwards or Vermillion. 19       Q. And that's true for both the claim that 20       there was a trespass and the notice that there 21       was going to be this filling or this mounding 22       done on the property line? 23       A. That's right, I did not contact them. 24       Q. Did you take any photographs of any stumps 25       or roots that you claim were cleared on the	1        A. I didn't say all. We went and we tried to 2       go with the City of Toledo. We went -- before we 3       did this mound, we took all the pictures, we 4       brought them out. I gave Christy the main photos 5       that showed these stumps clearly on Cambridge 6       property, trees going in 20 feet. 7        We shared it with them. We tried to 8       have a joint survey. They didn't want to do 9       that, but they did, they and Ric-Man did come 10       back and put more stakes in. And they lined up 11       with ours. 12       So we did make an effort before we did 13       this mound to bring them out, and Ric-Man 14       certainly was there. And I don't know, maybe 15       Vermillion was gone by this time. 16       But we made a conscientious effort to 17       get everybody to see all of the trespass stumps 18       that we had through there, plus all the vines 19       that were sticking up that you can still see from 20       some of these. We did do that. 21       Q. You're not answering my question. I want 22       you to listen to my question very carefully and 23       answer the specific question I'm asking you 24       rather than get off on a tangent, okay? You have 25       to answer out loud, yes or no.

40 (Pages 154 to 157)